

IN THE COUNTY COURT OF VICTORIA

Revised

AT MELBOURNE
CRIMINAL DIVISION

THE QUEEN

V

Mr Cooper

[REDACTED]

JUDGE:

HIS HONOUR JUDGE [REDACTED]

WHERE HELD:

Melbourne

DATE OF HEARING:

DATE OF SENTENCE:

[REDACTED] February 2007

CASE MAY BE CITED AS:

R v. ^{Mr Cooper} [REDACTED]

MEDIUM NEUTRAL CITATION:

[2007] VCC 0168

REASONS FOR SENTENCE

Catchwords:

APPEARANCES:

Counsel

Solicitors

For the Crown

Mr G. Horgan SC

For the Accused

Mr Cooper

Mr T. Hargeaves

For the Accused

[REDACTED]

[REDACTED]

6 I understand this to be illustrative of your role. You were the "cook," the person who manufactured the drug in clandestine laboratories set up by you. You were supplied with the necessary precursor chemicals and with equipment by others, principally members of the Mokbel family.

7 After the manufacture of the drugs you sold or delivered them to your principal on the basis that you were to receive a share of the profits. Following the fire at Pascoe Vale South you were arrested on 13 February 2002. You were released on bail the following day. Your plea of guilty to this count is an admission that the quantity of methyl-amphetamine manufactured by you was not less than 2.5 kilograms, the amount the law determines to be a large commercial quantity.

8 The second count of trafficking in a large commercial quantity of methyl-amphetamine relates to the manufacture of the drug by you between 10 September 2002 and 11 April 2003 at premises in Rye and delivery of the drug to those who had engaged you to manufacture it. This offence was committed while you were on bail with respect to the Pascoe Vale offence.

9 In this period you and [REDACTED] were the subject of a police investigation. You had established a laboratory at premises in Rye. The premises were monitored by police and placed under electronic surveillance. On 13 to 15 March 2003 you and an associate manufactured a quantity of methyl-amphetamine estimated to be 5.825 kilograms at the premises. You delivered the major portion of this drug to Milad Mokbel. On 26 to 27 March 2003 you and [REDACTED] manufactured a quantity of methyl-amphetamine estimated to be 3.9 kilograms at the premises. You delivered this drug to Kabalan Mokbel who, it is said, was acting for Tony Mobkel.

10 On 9 to 11 April 2003 you and [REDACTED] manufactured a quantity of methyl-amphetamine estimated to be 7.468 kilograms at the premises. You delivered 2.2 kilograms of this drug to Kabalan Mokbel. [REDACTED] was arrested in the

course of this transaction. He was found to be in possession of 4.7 kilograms of the drug. You were arrested subsequently and found to be in possession of .568 kilograms of the drug, as well as 160 grams of cannabis and an amount of cash.

11 The total quantity of methyl-amphetamine referred to in this summary and admitted by you and [REDACTED] to have been manufactured by you is in the of 17.193 kilograms. A count of possession of cannabis contained in the third presentment relates to the cannabis found in your possession when you were arrested on 11 April 2003.

12 Following your arrest on 11 April 2003 you were remanded in custody until being granted bail on 19 December 2003, a period in custody of 253 days, [REDACTED] arrested on [REDACTED] 2003. He was released on bail on [REDACTED] 2003, having spent [REDACTED] days in custody.

13 The counts on the fourth presentment relate to offences at Strathmore in April 2006. On 15 April you took possession of shop front premises in [REDACTED] Strathmore. Over the following week you adapted the premises to be suitable for the manufacture of methyl-amphetamines. The work included not only the clandestine laboratory but security cameras, barricades, false walls and similar adaptations.

14 On 21 April 2006 you commenced the manufacture of methyl-amphetamine. A police raid was conducted on 22 April and you were arrested. Police located at the premises 2.8 kilograms with a purity of 60 per cent, 1.6 kilograms of - I think that should read 2.8 kilograms of methyl-amphetamine, 1.6 kilograms of phenyl-2-propanone and 11.3 kilograms of (3,4-methylenedioxyphenyl)-2-propanone. I am informed that this last drug is a precursor or necessary ingredient for the manufacture of the drug, Ecstasy. A commercial quantity of this drug is determined to be 0.5 of a kilogram. You were also found to be in possession of two unregistered handguns. You have

been in custody since your arrest on 22 April 2006.

15 How you became enmeshed in this network of criminal conduct and associates merits brief consideration. You and [REDACTED] now aged [REDACTED] and [REDACTED] respectively, are [REDACTED] of the [REDACTED] of [REDACTED] immigrants. Your date of birth is [REDACTED]. You grew up in the [REDACTED] area, attending the local State school and technical school to Year [REDACTED].

16 ^{Family Member} [REDACTED] was an acquaintance of Mrs Mokbel. Following the [REDACTED] [REDACTED] in [REDACTED] when you were [REDACTED] the [REDACTED] of Mrs Mokbel led to you forming closer associations with members of the Mokbel family. It is, as I understand it, this association and your own involvement with drugs which appear to be the first steps taken on what has proved to be a corrupt criminal path.

17 You began to use [REDACTED]^{PII} when [REDACTED]^{PII} and became an [REDACTED]^{PII} from the age of [REDACTED]^{PII} to approximately [REDACTED]^{PII} when [REDACTED]. You were convicted of [REDACTED] and [REDACTED] by the Magistrates' Court at [REDACTED] in [REDACTED]^{PII} and at [REDACTED] in [REDACTED]^{PII}.

18 As an adolescent and young man you had employment in a restaurant run, as I understand it, by Tony Mokbel and Harty Mokbel. Later, following [REDACTED] you had a [REDACTED] and then [REDACTED] work. Early in [REDACTED] you [REDACTED] moved to a house near [REDACTED] where the Mokbel family house was located, and later in [REDACTED]^{PII} you purchased a home in [REDACTED]^{PII}. As this brief history indicates, you have had a long association, going back to your youth, with the Mokbel family.

19 In one of your statements you recounted how you began to experiment with manufacturing amphetamines in the late 1980's. [REDACTED] who had [REDACTED] gave some guidance and assistance to your experimentation. He appears to have had a more advantaged upbringing

than you as [REDACTED] in the [REDACTED] In 1990 the two of you manufactured a substantial quantity of amphetamine which was sold to Noel Laurie for more than half a million dollars.

20 By 1990 then you were already involved in criminal activity of the most serious kind. It is also apparent that your criminal activity has been more extensive than the offences for which you are now before the court.

21 Between 1992 and 1997 you lived and worked in [REDACTED]^{PII} where you were engaged in [REDACTED] with [REDACTED]^{PII} This enterprise was not a financial success and when you returned to Melbourne you had financial difficulties. You worked as a [REDACTED] By then you had [REDACTED] [REDACTED] but [REDACTED] was in difficulties and by 2001 [REDACTED] [REDACTED] It was in these circumstances, I am told, that you met Tony Mokbel by chance in the Brunswick Market in February 2001. You asked him for work. He offered you work as a cook, manufacturing amphetamines. It led to you becoming deeply involved with people engaged in crime and the commission of the offences for which you are now before the court. Large sums of money were available to be made by you and by [REDACTED] who became involved with you.

22 Drug offences of the kind to which you have pleaded guilty are considered to be a social evil of a most serious and pernicious kind, causing untold harm to many people, fostering a violent criminal subculture and requiring the expenditure of substantial community resources in investigation and detection. They are crimes of greed, careless of the human and social cost.

23 The gravity of the offences is reflected in the maximum penalties provided. For trafficking in a large commercial quantity of a drug of dependence the maximum penalty is life imprisonment and 5000 penalty units. For trafficking in a commercial quantity it is a term of imprisonment of 25 years. For possession of cannabis it is a term of imprisonment of one year, and for

possession of unregistered handguns a term of imprisonment of seven years.

24 Clearly you face a very substantial term of imprisonment. Such a sentence must make clear the court's denunciation of the crimes and seek to deter those mindful to commit them. As you will be convicted of four scheduled drug offences and sentenced to a term of imprisonment you must be sentenced as a serious drug offender and I must regard the protection of the community as the principal purpose for which the sentence is imposed.

25 Having regard to the matters that I am about to refer to, principally the assistance that you have given to the police, I do not consider it necessary, in order to achieve that purpose, to impose a sentence longer than that which is proportionate to the gravity of the offences.

26 A number of character references have been tendered on your behalf. I have read and considered them. I think that it is obvious that considering the serious nature of your criminal activity the testimony of others as to your good qualities cannot carry much weight in the exercise of judgment involved in sentencing you. What does appear clear is that one of the costs of your criminal conduct has been and will continue to be the [REDACTED] of [REDACTED] [REDACTED] with [REDACTED] and with [REDACTED] now [REDACTED] and [REDACTED]

27 I have also read the report of ^{P/I} [REDACTED] a consultant clinical and forensic psychologist, who you have attended on some 15 occasions. The report provides a full account of your family background and relationships and of your personal history. Mr Cummins administered personality tests to you, the results of which are set out in his report. He found you to be of normal and average intelligence. While he found that you have psychological and personality problems he did not consider that you suffer from a psychiatric illness.

28 You have pleaded guilty and provided very significant assistance to the police.

The adoption of this course must be taken to be demonstrative of remorse and a determination to turn from criminal activity.

29 At the commencement of the plea hearing Mr Horgan S.C., representing the Director of Public Prosecutions, informed me of the assistance that you have provided to the police since your arrest on 22 April 2006. This was confirmed by evidence from Detective Sergeant Flynn, a police officer attached to the Purana Taskforce. The assistance included you attending meetings with high level criminal associates and [REDACTED] these meetings. In doing so you placed yourself in a position of extreme risk. Detective Sergeant Flynn considered that a great deal of incriminating material and evidence of a very high quality was gathered as a result of you performing this role [REDACTED]

[REDACTED] As a consequence a number of people have been arrested and charged. You have continued to provide information to police since that time and have continued to be willing to do so.

30 In doing so you have disclosed wide scale criminal activity at a very high level. Detective Sergeant Flynn was in no doubt that in adopting this course you have placed your life at risk. The consequence is that your sentence will be served in a high security unit in a maximum security prison and upon your release you will require the assistance of the [REDACTED] to establish a [REDACTED] Mr Flynn thought that the safest option on your release would be [REDACTED]

31 You have made 29 separate statements to the police. Mr Horgan called you to the witness box and on oath you testified with respect to each of those statements, that the contents of the statement are true and that you are prepared to give evidence in accordance with the statement in a court of law if required to do so.

32 Detective Sergeant Flynn expects that you will be required to appear as a witness in a number of court hearings, both committal hearings and trials, over

the next four or five years. You acknowledged before me that it has been made, as you said, crystal clear to you that if you do not give evidence in accordance with the undertaking given to this court you can be brought before the Court of Appeal and re-sentenced.

33 Mr Horgan handed to me in a sealed envelope a letter addressed to me from Detective Superintendent Porter, dated 7 February 2007. This letter, which is referred to as a letter of assistance, outlines in some detail the actions the police have been able to take with respect to 30 or 31 different people, the majority of whom are considered by police to be "high level serious career criminals entrenched in the heart of the Melbourne underworld." I have read that letter and give full weight to it. In accordance with the request contained in the letter I have returned it to Mr Horgan today.

34 It is a well established principal of sentencing that assistance given to the authorities is to be weighed in favour of leniency and where an offender such as yourself gives assistance of considerable value and at great personal risk a substantial discount on a sentence that would otherwise be imposed, should be given. Mr Horgan, on behalf of the Director, acknowledged that the cooperation by you and by [REDACTED] has been of great value to the authorities and will be so in the future.

35 He also acknowledged that you had placed your lives at risk of vengeance for your cooperation to date and action to prevent you giving evidence in the future. He has informed me that his instructions from the Director are that he considers that a head sentence of 10 or 11 years with a non-parole period of seven years would be an appropriate sentence in your case, allowing for a substantial discount for the assistance given and the undertakings made by you.

36 Your counsel, Mr Allen, does not submit that this would be an inappropriate sentence. In other words it is agreed between senior counsel that such a

sentence would be appropriate. I am persuaded by the material placed before me that there are powerful considerations favouring exceptional leniency in the sentence to be imposed. I am greatly assisted by the recommendations, both of counsel for the Director and your counsel, and I propose to give effect to them. I announce in accordance with s.5(2AB) of the Sentencing Act 1991 that I am imposing a less severe sentence than would otherwise have been imposed because of the undertaking given by you to assist, after sentencing, law enforcement authorities in the investigation and prosecution of criminal offences.

37 I direct that it be noted in the records of the court that you have made 29 statements to police and undertaken to the court on 8 February 2007 to give evidence in accordance with those statements if required to do so.

38 Yes, would you stand, please, ^{Mr Cooper}

39 You are convicted of each of the offences to which you have pleaded guilty. On the count of trafficking in a large commercial quantity of a drug of dependence at Pascoe Vale South on 13 February 2002 you are sentenced to a term of imprisonment of five years. This is the base sentence. As you have been convicted of a relevant drug offence and sentenced to a term of imprisonment I am required as a matter of law to sentence you for the other drug trafficking offences as a serious drug offender.

40 On the count of trafficking in a large commercial quantity of a drug of dependence between 10 September 2002 and 11 April 2003 you are sentenced to a term of imprisonment of six years. I order that four years of this sentence be served concurrently with the base sentence. I direct that it be entered in the records of the court that you were sentenced in respect of this offence as a serious drug offender.

41 On the count of trafficking in a large commercial quantity of a drug of dependence at Strathmore between 15 April 2006 and 22 April 2006 you are

sentenced to a term of imprisonment of 6 years. I order that 4 years of this sentence be served concurrently with the base sentence. I direct that it be entered in the records of the court that you were sentenced in respect of this offence as a serious drug offender.

42 On the count of trafficking in a commercial quantity of a drug of dependence at Strathmore on 22 April 2006 you are sentenced to a term of imprisonment of four years. I order that three years and six months be served concurrently with the base sentence. I direct that it be entered in the records of the court that you were sentenced in respect of this offence as a serious drug offender.

43 On the count of possession of two unregistered general category handguns on 22 April 2006 you are sentenced to a term of imprisonment of two years. I order that six months of this sentence be served cumulatively with the base sentence. On the count of possession of cannabis on 11 April 2003 you are sentenced to a term of imprisonment of three months. By operation of law that sentence is to be served concurrently with the base sentence. The total effective sentence is a term of imprisonment of ten years. I fix the period of seven years as the period during which you shall not be eligible to be released on parole.

44 I direct that the period of 563 days during which you have been held in custody in relation to proceedings for these offences be reckoned as a period of imprisonment already served under the sentence imposed. On the application by the Director of Public Prosecutions on behalf of AAMI Insurance and with your consent, I order, pursuant to s.86 of the Sentencing Act that you pay the sum of \$56,611.23 to Australian Associated Motor Insurers Ltd, Post Office Box 14180, Melbourne, as compensation for damage suffered to the property at [REDACTED] Pascoe Vale South on 13 February 2002.

45 On the application of the Director of Public Prosecutions for a pecuniary penalty order and with your consent, I order, pursuant to s.59 of the

Confiscation Act 1997 that you pay to the State a pecuniary penalty in the sum of \$300,000. Having regard to s.52E(2A) of the Sentencing Act I have not had regard to this pecuniary penalty order in sentencing you.

46 Mr Cooper there are some other ancillary orders to be made. I will make them now, just to deal with those. I have made the pecuniary penalty order and signed the order, Mr Horgan. I will return two copies of the order to you and one copy should go on the file.

47 MR HORGAN: All right, thank you, Your Honour.

48 HIS HONOUR: Also what is sought, Mr Cooper, as you are aware, a disposal order. That is an order forfeiting a considerable body of property to the Chief Commissioner. I am advised that you consent to that order and I have signed that order. Again, Mr Horgan, I return two copies to you and a copy should go on to the file. I also order, pursuant to s.464ZF(b)(i) of the Crimes Act that the forensic sample and any related material and information obtained from you, Mr Cooper, pursuant to the informed consent that you gave on 22 April 2007, be retained. I make that order being satisfied that it is justified having regard to the seriousness of the offending, that you consent to the order being made and that the order is in the public interest. I have signed those orders, Mr Horgan and return them to you and one should go on the file.

49 MR HORGAN: All right, thank you, Your Honour.

50 HIS HONOUR: There is a further order sought and to which you have consented, Mr Cooper, that certain property, which is described as two sums of money, one being \$103.10 and the other being \$50, be forfeited to the minister. I am satisfied that it is tainted property and I order, pursuant to s.33(1) of the Confiscation Act, that it be forfeited to the Minister. I have signed those orders, Mr Horgan, and the same applies. I have already made the order that you pay compensation to the Australian Associated Motor Insurers Ltd. I have signed those orders and return those to you also.

51 And finally, ^{Mr Cooper} there is another disposal order that you consent being made. It lists a number of items of property, largely, it would appear, property connected with the manufacture of amphetamines, and I make a disposal order with respect to that property shown in the schedule, that is, that it be forfeited to the State and placed in the custody of the Chief Commissioner. I have signed those orders, Mr Horgan, and return those to you.

